



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 12, 1994

Mr. Therold I. Farmer  
Walsh, Anderson, Underwood,  
Schulze & Aldridge, P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR94-643

Dear Mr. Farmer:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. You assert that the requested information is excepted from required public disclosure under sections 552.101, 552.102, 552.103, and 552.111 of the Government Code. Your request was assigned ID# 27128.

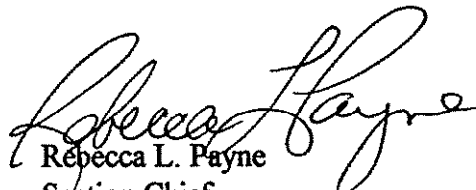
The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within 10 days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

We realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request. You sent copies of the information we requested but failed to mark the documents that correlate with the exceptions you claimed. On August 12, 1994, we returned the documents to you requesting that you mark the documents and return them to us within 7 days from the date of our letter. To date we have not received the marked documents.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete. Without the information requested from you, this office is unable to evaluate the exceptions you raised. Consequently, we find that you have not met your burden under sections 552.301 - .303 of the act and that the information is presumed to be public.

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). If you have any questions regarding this matter, please contact our office.

Yours very truly,

  
Rebecca L. Payne  
Section Chief  
Open Government Section

RLP/sbm

Ref.: ID# 27128

cc: Ms. Mary Hepp  
Texas State Teachers Association  
UniServ Region 22A/B  
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